

AMENDED IN ASSEMBLY JULY 1, 2005

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE APRIL 13, 2005

**SENATE BILL**

**No. 45**

**Introduced by Senator Alarcon**

*(Coauthors: Assembly Members Bogh and Oropeza)*

January 5, 2005

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An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Alarcon. Intermodal marine terminals.

Existing law imposes special regulations on various business activities but does not specifically regulate detention and per diem charges imposed by intermodal terminals on intermodal equipment used by motor carriers.

This bill would prohibit an intermodal marine equipment provider or marine terminal operator from imposing per diem, detention, or demurrage charges, as defined, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. The bill would also prohibit an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem, detention, or demurrage charges or certain other charges from the motor carrier's freight bill.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 28.5. INTERMODAL MARINE TERMINALS

22928. (a) The Legislature finds and declares that unilateral termination, suspension, or restriction of equipment interchange rights of an intermodal motor carrier shall not result from intermodal marine terminal actions as specified in subdivision (b).

(b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem, detention, or demurrage charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

(1) When the intermodal marine or terminal truck gate is closed during posted normal working hours. *No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate.*

(2) When the intermodal marine terminal decides to divert equipment without 48 hours' ~~notification in writing~~ *electronic or written notification* to the motor carrier.

(3) When the intermodal marine terminal is assessed a fine pursuant to Section 40720 of the Health and Safety Code.

(4) When the intermodal marine terminal equipment is out of compliance pursuant to Section 34505.9 of the Vehicle Code or the equipment is ~~designated as being~~ *placed* out of service.

(5) When a loaded container is not available for pickup when the motor carrier arrives at the intermodal marine terminal.

(6) When the intermodal marine terminal is too congested to accept the container and turns away the motor carrier.

(c) An intermodal marine equipment provider shall not take any of the following actions:

1 (1) Charge back, deduct, or offset per diem charges,  
2 maintenance and repair charges, or peak hour pricing from a  
3 motor carrier's freight bill.

4 (2) Unilaterally terminate, suspend, or restrict the equipment  
5 interchange rights of a motor carrier or driver that uses the  
6 dispute resolution process contained in the Uniform Intermodal  
7 Interchange and Facilities Access Agreement to contest a charge,  
8 fee, or fine, including a charge for maintenance and repairs  
9 imposed by the intermodal marine terminal, while the dispute  
10 resolution process is ongoing.

11 (3) Unilaterally terminate, suspend, or restrict the equipment  
12 interchange rights of a motor carrier for late payment of an  
13 undisputed invoice from the intermodal marine terminal,  
14 provided that the payment is no more than 60 days late.

15 (4) Unilaterally terminate, suspend, or restrict the equipment  
16 interchange rights of a motor carrier or driver for parking tickets  
17 issued by the marine terminal *unless the tickets remain unpaid*  
18 *more than 60 days after being in receipt of the driver or motor*  
19 *carrier. No parking tickets shall be issued by the marine terminal*  
20 *to a driver or motor carrier for a parking violation if the*  
21 *assigned spot was occupied and the trouble window or terminal*  
22 *administration was unable to immediately provide a place to*  
23 *park, or if the driver was instructed to park the equipment in a*  
24 *different spot by marine terminal personnel or security.*

25 (d) As used in this chapter:

26 (1) "Per diem," "detention," or "demurrage" means a charge  
27 imposed by an equipment provider *or marine terminal operator*  
28 for late-~~returns~~ *return or pickup* of an empty or a loaded  
29 intermodal container and chassis.

30 (2) "Closed" means not open or available to receive  
31 equipment. The marine terminal shall have posted working  
32 hours, and "closed" shall mean that the terminal is not open to  
33 release or accept equipment during those posted working hours.  
34 ~~No charges shall be assessed on a day that the posted working~~  
35 ~~hours indicate that the marine terminal is closed.~~

36 (3) ~~"Divert"~~ *"Divert equipment"* means ~~a change of location~~  
37 ~~from the location where the motor carrier has been directed to~~  
38 ~~return the equipment to a different location from that of pickup.~~  
39 ~~Divert notification by the equipment provider shall be in writing~~  
40 ~~and the motor carrier shall be given not less than 48 hours' notice~~

1 ~~for the chassis or container.~~ *the motor carrier has been directed*  
2 *to return the equipment to a location different from the location*  
3 *where the equipment was picked up by the motor carrier.*

4 (4) “Shall not impose per diem, detention, or demurrage  
5 charges on an intermodal carrier” shall apply to the day or days  
6 in question that an occurrence referenced in subdivision (b) took  
7 place.

8 (5) “Intermodal marine terminal” means a marine terminal  
9 location or facility that engages in discharging or receiving  
10 equipment owned, operated, or controlled by an equipment  
11 provider.

12 (6) “Written or electronic notification” means any  
13 communication by postal letter, facsimile, electronic mail, or  
14 other electronic notification.